

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.177 OF 2019

ZAKARIYA MASJID AND KABRASTAN TRUST WAQF
THROUGH IT'S SECRETARY, MOHAMMED RAZWI
INAMDAR

VERSUS

M/S SYNERGY PREMISES L.L.P. THROUGH IT'S
PARTNER AMIT KANTILAL LUNKAD AND ANOTHER

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Advocate for applicants : Mr Pathan Zafar M.

Advocate for Respondent 1 : Ms. Surbhi Oswal & Mr
Gulam Dastgir Shaikh

Advocate for respondent No.2 : Mr N E Deshmukh h/f Y
B. Pathan

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CORAM : V.K. JADHAV, J.

Dated : November 04, 2019

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ORDER :-

1. The applicant is a religious Waqf institution registered under the Waqf Act, 1995. The applicant-institution own and posses two pieces of land situated adjacent to each other and those are survey number 19 (CTS No.276) and Survey No.35-B (CTS No.278) of Ghorpadi, District Pune. The applicant has instituted a waqf suit No.76 of 2019 before the Maharashtra Waqf Tribunal, Aurangabad against the respondents for a decree of perpetual injunction in respect of the suit

property bearing survey no.19 admeasuring 26R situated at Ghorpadi village near Agakhan Bridge described in detail in paragraph no.1 of the plaint. According to the applicant, survey number 19 is described as a burial place and even in the 7/12 extract it is mentioned as Masanvata (Kabrastan). The applicant- institution is old waqf institution in existence since last 200 years. It is stated that said Kabrastan caters the need of the Muslims of surrounding areas/villages for the purpose of burying dead bodies of Muslims, offering prayers and conducting other rights and rituals of Muslim community. There is land survey no.34 belonging to respondent no.1/original defendant. According to the applicant-institution, there was 15 to 20 feet road at the south portion of the land survey no.34 and towards south side of the road there is a wall of the Military department. According to the applicant-institution after 2002 time and again width of the road was increased. The applicant-institution contends that area of land survey no.34 in revenue record is shown as 46 gunthas. The Pune Municipal Corporation has

acquired the land many times from survey numbers 34, 35, 36 and 37 by which width of the road was increased and Agakhan Bridge was also constructed, however, the land belonging to the military department was never acquired. The applicant-institution contends that area of the land acquired from survey no.34 for the purpose of the said road is not reduced from the total area of survey no.34 while preparing the map and property card, but instead the area of survey number 34 is shown as 5200 square meters thereby 600 square meters excess land is shown in survey no.34 belonging to respondent no.1. In fact, as per the 7/12 extract survey number 34 is totally admeasuring 4600 square meters and acquired land should have been reduced from the 4600 square meters, but the same has not been done. Instead, in the revenue record land of the applicant-institution is shown as 2400 square meters instead of 2600 square meters i.e. 26 gunthas. According to the applicant-institution, said mistake has been deliberately committed so as to aid respondent no.1 and his predecessor-in-title to encroach upon the

land of the applicant-institution. Thus, respondent no.1 by taking dis-advantage of the same trying to encroach upon the land of the applicant-institution. The applicant-institution has, therefore, instituted a Waqf Suit and also filed an application Exhibit 5 for issuance of temporary injunction. However, the learned District Judge/Chairman of the Waqf Tribunal, Aurangabad, though, issued ex-parte temporary injunction by order dated 5.4.2019, after hearing respective parties by the impugned order dated 31.8.2019 rejected the application Exh.5 filed by the applicant-institution seeking temporary injunction. Hence, this civil revision application.

2. Learned counsel for the applicant-institution submits that respondent no.1 deliberately by giving false and incorrect boundaries of survey number 34 had got done the measurement and prepared the map dated 6.3.2018 in the proceeding no.84 of 2018. Same is eminent upon appraisal of the measurement application filed by respondent no.1. Towards north the drainage

has been shown by respondent no.1, however, in fact, towards north there is Masjid and burial place belonging to the applicant-institution in survey no.19. There is common bandh between survey no.19 and 34. There is no drainage in existence towards any of the side of the property belonging to respondent no.1. Even, the measurement notice was not served upon the applicant-institution as respondent no.1 had not shown the applicant-institution as the adjoining land holder in the measurement application. Measurement was done behind back of the applicant-institution. Learned counsel submits that respondent no.1 is trying to claim ownership over 965 square meters area belonging to the applicant-institution on the strength of illegal measurement map. Being aggrieved by the same, the applicant-institution had preferred a revenue civil appeal before the Deputy Superintendent of Land Records and by order dated 28.2.2019 said appeal was partly allowed. Aggrieved by the same, appeal has been preferred before the Deputy Director of Land Record, Pune and the same is pending. Learned counsel

submits that due to the non-correction of the mistake committed by the revenue officer and City Survey Officer by not reducing the area acquired from survey no.34 for the purpose of the construction of the road, respondent no.1 by taking disadvantage of the same trying illegally to grab the excess land belonging to the applicant-institution and also the common road of 12 meter in width. In the map only 15 ft road is shown instead of 60 ft from survey no.34. In fact, 60 ft road is in existence and said road passes from south side of survey no.34. Learned counsel submits that respondent no.1 with the aid of money, muscle and political powers bent upon to encroach and close the road used by the common public for coming to the Masjid and burial place. Learned counsel submits that even on 22.3.2019 respondent no.1 with the aid of the bouncers and agents had tried to cut/destroy the trees belonging to the applicant-institution in the suit property. The applicant had therefore filed a complaint before the police, but no cognizance was taken. Respondent no.1 is trying to grab 965 square meters open land of the applicant-institution

which is used to park the vehicles of the persons coming to offer prayers/Namaj and burial ceremony. Learned counsel submits that respondent no.1 is bent upon to make the construction over the property of the applicant-institution. Learned counsel submits that applicant-institution has made out a prima facie case in its favour for grant of temporary injunction. The Court below has erred in not appreciating the 7/12 extract which clearly shows the area of the applicant-institution i.e. survey number 19 as 26 gunthas. Even the court below has utterly failed to consider and appreciate that city survey extract of the land belonging to respondent no.1 shows the area 5200 square meters, however, on the contrary, respondent no.1 has specifically contended in his say filed to the application exh.5 about the area of the land survey no.34 as 4600 square meters. On this admission itself the Court below ought to have considered that the balance of convenience is not in favour of the respondent no.1. Learned counsel submits that out of survey no.34 nearly 483.49 square meters land is acquired by the Municipal Corporation and the

predecessor-in-title of respondent no.1 has given possession of that area to the Municipal Corporation by executing the possession receipt. However, this documentary evidence has been overlooked by the Court below. Learned counsel submits that upon perusal of the judgment delivered in R.C.S. No.2529 of 2012, it transpires that notice dated 5.3.2003 bearing outward No.LAQ-10/3679 is held as illegal, void, ultra-virus and contrary to the provisions of section 213 of the B.P.M.C. Act. However, there is no order or judgment placed on record by respondent no.1 which would reveal that the LAQ No.10/3601 acquiring land of respondent no.1 to the extent of 483.49 sq. meter in S.No.34 is set aside or quashed. Learned counsel submits that respondent no.1 by taking undue advantage of the order passed by the Court below by which the application exh.5 came to be rejected and after expiration of two weeks from the order passed below exh.68 respondent no.1 had forcibly dispossessed the applicant-institution from the property survey no.19 from the north side with the help of bouncers and agents on the night of 15.9.2019 and

thereby encroached upon the land survey no.19 of the applicant-institution to the extent of land admeasuring 965 square meters during the pendency of the suit. Learned counsel submits that, if respondent no.1 starts construction from the north portion of survey no.19 i.e. suit property and, if the same is continued, then the main suit and the purpose of filing of the present civil revision application would be frustrated. Learned counsel submits that the applicant had filed an appeal before the Deputy Director of Land Records against the order of Deputy Superintendent of Land Records. The learned Deputy Director of Land Records by order dated 13.6.2019 specifically directed to maintain the status-quo by both the parties in respect of the measurement map till the disposal of the appeal. However, despite the status-quo order, respondent no.1 is carrying construction work over the Waqf property and has also dumped the construction material in front of the gate of the Mosque and thereby wrongfully restrained the public from offering Namaz in the Mosque. Learned counsel submits that this civil revision application is

deserves to be allowed by quashing and setting aside the order passed by the Waqf Tribunal, Aurangabad in Waqf Suit No.76/2019 below exh.5 and the application below exh.5 filed by the applicant-institution requires to be allowed.

3. Learned counsel for applicants placed his reliance on following judgments :-

- i. Gangubai Babiya Chaudhary and others Vs. Sitaram Bhalchandra Sukhtankar and others reported in AIR 1983 Supreme Court 742.
- ii. Jyoti Prakash Vs. Kamal Kant reported in AIR 2011 Himachal Pradesh 116.
- iii. Maharwal Khewaji Trust (Regd) Faridkot Vs. Baldev Dass reported in 2001 AIR SCW 6333.
- iv. M/s Great Eastern Energy Corporation Ltd., Vs. M/s Jain Irrigation Systems Ltd., and others reported in 2010 (3) ALL MR 872.
- v. Ramesh Kumar Vs. Kesho Ram reported in 2009 ALL SCR (O.C.C.) 97.
- vi. State of U.P. and ors. Vs. M/s Mahindra and Mahindra Ltd., reported in 2011 ALL SCR 1275.
- vii. Cantonment Board, Sagar Vs. Sudhansh reported in AIR 1999 Madhya Pradesh 205.
- viii. Prakash Singh Vs. State of Haryana and ors on 15 January 2002.

4. Learned counsel for respondent no.1 submits that respondent no.1 had purchased survey no.34 admeasuring 4600 square meters in January 2017 and July 2017 from the Bidkar family. Said Bidkar family and their predecessors-in-title always had physical, secured and compounded possession with cow shed etc. on survey no.34 admeasuring 4600 square meters since beginning. Said Bidkar family have historically been "Gawalis" and they had a Cow Shed (Gotha) on the northern portion of survey no.34 admeasuring 4600 square meters i.e. adjoining along compound wall of survey no.19. Learned counsel submits that there is a fraudulent misrepresentation of the order passed by the District Superintendent of Land Records, Pune to obtain initial ex-parte order of injunction. The order dated 28.2.2019 passed by the District Superintendent of Land Records Pune did not set aside the demarcation issued in land survey no.34. The Superintendent of Land Records gave directions to the City Survey Officer no.2 to mention city survey number of the land and to verify whether any portion of the land survey no.34 has

been acquired for the purpose of the road and to issue the said demarcation within one month from the date of the order. In furtherance of the said order, demarcation dated 10.4.2019 was issued by the City Survey Officer no.2 in respect of the land bearing survey no.34. The applicant-institution has fraudulently mis-represented and suppressed material facts and misled the Tribunal to the effect that the demarcation was set aside by the District Superintendent of Land Records, Pune. Learned counsel submits that respondent no.1 deny all the averments made in the application exh.5 including the averments about religious Waqf Institution and land survey no.19 and S.No.35-B owned and possessed by the applicant-institution. Learned counsel submits that S.No.34 admeasuring 4600 square meters i.e. 46 gunthas is and continued to remain in actual physical possession of respondent no.1. There is an existing boundary wall separating survey no.19 from survey no.34 admeasuring 4600 square meters. Said wall is also several decades old. Learned counsel submits that there exists no Masjid and Karbastan. Said pleading is

contrary to the record. Learned counsel submits that on perusal of the development plan of the old PMC Limits published in 1987, land survey no.34 and the road on the southern side is shown. Learned counsel submits that there has always been an existing road to the southern side of the land survey no.34 and the same is also admitted by the applicant-institution. The road width as exists on the southern side of the land survey no.34 as on date can be explained by the fact that additional width of the road was made available and indicated in the documents such as [i] copy of extract from the Military land register Maharashtra State dated 10.3.1942 and [ii] copy of the extract of ministry of Defence letter dated 17.3.2008.

5. Learned counsel submits that the Pune Municipal Corporation issued a notice dated 5.3.2003 for road widening under section 213 of the Bombay Provincial Municipal Corporation Act, 1949 to Shri Raghunath Bidkar (being one of the predecessor-in-title of respondent). Therefore, said Raghunath Bidkar had

filed RCS No.2529 of 2012 before the Civil Judge Junior Division (PMC Court), Pune for declaration and permanent injunction against the Pune Municipal Corporation and three others challenging thereby the notice dated 5.3.2003 for acquisition of land out of survey no.34, Ghorpadi. By judgment and decree dated 8.11.2014 Civil Court has decreed the suit with costs and declared that defendant nos. 1 to 3 therein are not entitled to dispossess the plaintiff from any portion of the property of survey no.34, Ghorpadi, Pune without following the due procedure of law. The notice dated 5.3.2003 bearing outward no.LAQ-10/3679 given by defendant no.3 on behalf of defendant nos. 1 and 2 as illegal, void, ultra virus and contrary to the provision of Section 213 of the BPMC, Act. Even, defendant nos. 1 to 3 therein were permanently restrained from causing any implementation of the notice dated 5.3.2003 and from causing dispossession of the plaintiff from the suit property without following the due procedure of law and they are permanently restrained from causing any act in pursuance of the notice dated 5.3.2003. Learned

counsel submits that no portion whatsoever out of survey no.34 admeasuring 4600 square meters has ever been handed over to the Pune Municipal Corporation/Governmental Authorities by either this respondent no.1 or by any of its predecessors-in-title. Learned counsel submits that there is no question of negligence and mistake on the part of the City Survey Officer due to which the area of the land acquired from survey no.34 was not reduced from the total area of the land survey no.34 while preparing the map and property card. Learned counsel submits that the applicant-institution has falsely taken a plea about additional area of 600 square meters conferred on respondent no.1. Ownership of respondent no.1 is reflected on the Property Card extract of CTS No.275 for an area admeasuring 4600 square meters. Learned counsel submits that there is no question of giving false and incorrect boundaries of survey no.34 for measurement and preparation of the map dated 6.3.2018 in proceeding no.84 of 2018. There was an existing demarcation of the land survey no.34 dated

28.7.1993 done at the instance of the predecessors-in-title of respondent no.1. Respondent no.1 had applied for demarcation on 26.2.2018 and the City Survey Officer issued a map dated 6.3.2018. Learned counsel submits that applicant-institution has fraudulently misrepresented and suppressed material facts and mislead the Court. Learned counsel submits that the District Superintendent of Land Records, Pune after hearing both the parties disposed off the appeal on 28.2.2019 by partly allowing the appeal and giving directions to the City Survey Officer No.2 to mention City survey number of the land and to verify whether any portion of the land was acquired for the purpose of the road and to issue demarcation within one month from the date of the order. The District Superintendent of Land Records has not set aside the demarcation of the land survey no.34. In furtherance of the said order, demarcation dated 10.4.2019 was issued by the City Survey Officer No.2 Pune in respect of the land survey no.34. Being aggrieved by the said corrected demarcation dated 10.4.2019 the applicant-institution

had preferred an appeal before the Deputy Director of Land Records, Pune Division, Pune and the Deputy Director of Land Records, Pune Division, has rejected the application seeking interim stay by the applicant on 13.6.2019. Learned counsel submits that there is no common road of 12 meters in width. Learned counsel submits that no square inch of land has been legally acquired from survey no.34 by any authority whatsoever. Learned counsel submits that on perusal of the demarcation of the land survey no.19, it clearly exhibits that there is no encroachment on land survey no.19. Learned counsel submits that respondent no.1 has not started construction on any portion of the land survey no.19. The construction material and the JCB are situated upon survey no.34 admeasuring 4600 square meters and the same is adjacent to the southern boundary of survey no.19 and not a part of survey no.19. Learned counsel submits that the applicant-institution has failed to show any prima facie case. Balance of convenience does not lie in favour of the applicant-institution. Learned counsel submits that the

grant of relief of injunction is a discretionary relief. The applicant-institution has not approached the Tribunal with clean hands. The impugned order is proper, correct and legal and calls for no interference. Learned counsel submits that respondent no.1 herein has invested huge amount of money in the purchase of property bearing survey no.34 admeasuring 4600 square meters. Respondent no.1 has gone through the rigorous process of all sanctions required under law to develop the said property bearing survey no.34 admeasuring 4600 square meters. Learned counsel submits that if the injunction is granted, irreparable loss, harm and prejudice will be caused to respondent no.1. Respondent no.1 herein is owner of the land survey no.34 admeasuring 4600 square meters and is entitled to carry out the construction on the said portion of land survey no.34. Learned counsel submits that the suit has been instituted with some ulterior motive. There is no substance in this Civil Revision Application and the same is liable to be dismissed.

6. Learned counsel appearing for respondent no.2 Waqf Board supports the case of the applicant-institution. Learned counsel submits that the revision application filed by the applicant-institution deserves to be allowed by setting aside the order passed by the Tribunal and the Waqf property is required to be protected by issuing the order of temporary injunction pending the suit.

7. I have heard the learned counsel for the applicant and the learned counsel for respondent nos.1 and 2, at length. With their able assistance, I have carefully perused the averments made in the memo of the civil revision application, the grounds taken therein, the annexures thereto and the affidavit-in-reply filed by the respondents.

8. I have carefully gone through the cases relied upon by the revision applicant. Order 39 Rule 1 of the Civil Procedure Code lays down the circumstances under which temporary injunction can be granted.

Furthermore, even the circumstances laid down in the rule exists, it does not compel the Court to grant temporary injunction in all cases. Thus, granting of an injunction under order 39 Rule 1 is purely within the discretion of the Court. It is also well settled that discretion under this Rule should, like other cases of discretion vested in Courts, be exercised in accordance with reason and on sound judicial principles. It is also well recognized principle that for grant of equity relief, the plaintiff must come to the Court with clean hands in order to claim the discretionary relief of injunction. The Court while disposing of an application for grant of temporary injunction should not go to the extent of deciding the main case of the parties, but the order should be a speaking order showing that the Court has taken a decision after applying its mind. The principles which govern the exercise of the discretion conferred by those Rule are to the effect that a person who seeks a temporary injunction must satisfy the Court following conditions :-

- i] First, that, there is a serious question to be tried in the suit and that on the facts before the Court there is a probability of his being entitled to the relief asked for by The first contention speaks about prima facie case.
- ii] Secondly, that the Court's interference is necessary to protect him from that species of injury which the Court calls irreparable, before his legal right can be established on trial, and
- iii] Thirdly, that the comparative mischief or inconvenience which is likely to issue from withholding the injunction will be grater than that which is likely to arise from granting it.

9. In the instant case, there is no dispute about the title. The applicant/original plaintiff claim for a decree of perpetual injunction against respondent no.1 in respect of the suit property survey no.19 admeasuring 26 R (2600 square meters). It is also not disputed that towards southern side of the suit land, survey no.34 admeasuring 46R (4600 square meters) is situated. Respondent no.1 had purchased the said land survey no.34 from the Bidkar family. It is also not disputed that towards southern side of land survey

no.34 there is a road. According to the applicant/original plaintiff certain portion of the land survey no.34 belonging to respondent no.1 came to be acquired for the purpose of widening the said road and, as such the total area of the land survey no.34 came to be reduced, however, the said reduced area is not shown anywhere in the record. In consequence thereof, respondent no.1 had taken undue advantage of the same and tried to encroach upon the land survey no.19 which is situated towards the northern side of the land survey no.34. It is also the case of the applicant/original plaintiff that during the pendency of this suit and when the Court below has vacated the ex-parte injunction granted in favour of the applicant/plaintiff on 15.9.2019, respondent no.1 has made encroachment over the portion of the suit land survey no.19 admeasuring 965 square meters. The applicant/original plaintiff also claims that respondent no.1 who is a builder has already started construction over the land survey no.34 including the aforesaid encroached portion.

10. It is not disputed that since long survey no.19 is admeasuring 26R, whereas survey no.34 is admeasuring 46R. It also appears that there is some mistake in the property card maintained by the City Survey Office, Pune about the actual area of both the lands. However, this hardly affects the contention raised by the parties.

11. It is the case of the applicant/original plaintiff that the Municipal Corporation, Pune has acquired almost 18 meters of land in width out of survey no.34 for widening the road, but the same area has not been reduced and shown on revenue record. According to the applicant/original plaintiff the Municipal Corporation, Pune has acquired almost 483.49 square meter of land. However, as rightly observed by the Court below and even on perusal of the documents annexed to this revision application, I do not find any document to substantiate the said contention raised by the applicant/original plaintiff. On the other hand, it appears from the record that the Municipal

Corporation, Pune has issued a notice to the predecessor-in-title of the respondent no.1 for acquisition of the land from survey no.34 for the purpose of the construction of the road and the predecessor-in-title of the respondent no.1 had instituted a Regular Civil Suit No.2529 of 2012 before the Civil Judge, Pune for declaration and permanent injunction against Pune Municipal Corporation. The Pune Municipal Corporation has given notice dated 5.3.2003 to the predecessor-in-title of the respondent no.1 for dispossessing him under the pretext of the construction of the road. Said suit came to be instituted for declaring the said notice as void and ultra-virus on the ground that the Pune Municipal Corporation is not entitled to dispossess the plaintiff from any portion of property survey no.34 for road widening as no any portion of the land survey no.34 has been acquired by any proceeding under the Land Acquisition Act. The Pune Municipal Corporation has strongly resisted the said suit by filing written statement and it has been specifically asserted in the said written statement that

the notice is legal as the Corporation wants to take the possession of the portion of the land survey no.34 for the purpose of road widening which is very urgent. The Civil Judge Junior Division (PMC), Pune by judgment and decree dated 8.11.2014 decreed the suit with costs and declared that defendant nos.1 to 3 (Pune Municipal Corporation and its officials) and on their behalf are not entitled to dispossess the plaintiff from any portion of the property of survey no.34 without following due procedure of law. Notice issued by the Pune Municipal Corporation is declared as illegal, void and contrary to the provisions of the BMC Act, 1949. Furthermore, the Pune Municipal Corporation and its officials are permanently restrained from causing any implementation of the said notice dated 5.3.2003 or causing any dispossession of the plaintiff from the suit property. There is no other document placed on record to indicate that certain portion of the land survey no.34 came to be acquired for the purpose of the construction or widening of the road towards southern side of the land survey no.34 and, as such, the actual area of the

land survey no.34 came to be reduced to the extent of the portion so acquired for widening the road. Though, the learned counsel for the applicant/original plaintiff has vehemently argued that towards southern side of the land survey no.34 there is a land in possession of the Military and, as such, the road is not likely to be widened by acquiring the land occupied by the Military, however, certain documents are annexed by respondent no.1 at Exh.A-A, A-B which indicates that the various defence land came to be transferred to the Pune Municipal Corporation for construction and widening of the road including the land survey no.35, 36, 37 and 42-B of village Ghorpadi. It is certainly for the respondent no.1 to lead the evidence to prove said correspondence, however, in absence of any positive evidence, prima facie, the applicant/original plaintiff has failed to substantiate his contention about acquisition of certain portion of the land survey no.34 for widening of the road.

12. It is also a part of the record that at the request of the Waqf Board, City Survey Officer has measured the suit land survey no.19 and fixed the boundaries on 17.11.2018. On careful perusal of the copy of the said map at exh.AJ at page 502, prima facie, it appears that some portion of the area of land survey no.34 has been encroached upon by the suit land survey no.19. Furthermore, the land survey no.34 also measured on 6.3.2018. Though, it is contended that same has been done behind back of the plaintiff, however, panchnama for carrying out the measurement bears the signature of the Secretary of the applicant Waqf. On perusal of the map of the suit land survey no.19 and land survey no.34, particularly, the map of the suit land 19, prima facie, I do not find any evidence about the encroachment by the adjoining land holder i.e. survey no.34. I have given thoughtful consideration to the averments made in the revision application that during the pendency of the suit, respondent no.1/original defendant has made encroachment over the portion of 965 square meters of the suit land survey

no.19, however, on perusal of the map Exh.AJ page 502, it appears that towards southern side of the suit land survey no.19, there is a construction having a tin sheet roof and that is almost touching the boundary of the suit land survey no.19 towards the southern side. If at all the encroachment has been made on the said portion measuring 965 square meters, said construction as shown in the map is required to be demolished. However, the applicant/original plaintiff has placed on record certain photographs taken during 14.9.2019 to 21.9.2019. It appears that the said construction having tin sheet roof is still in existence and the learned counsel for the applicant-original plaintiff has also accepted the same on instructions.

13. Prima facie, it appears that the applicant/original plaintiff has not approached the Court with clean hands. So far as the original pleadings of the suit and application Exh.5 filed along with the suit are concerned, there are vague allegations about the apprehension about the encroachment. Furthermore, it

appears that said apprehension has been expressed mainly on the count that respondent no.1 is likely to make encroachment over the portion of the land survey no.19 as area of the land survey no.34 came to be reduced for the purpose of the widening of the road towards the southern side. However, as discussed in detail in foregoing paragraphs, there are no documents placed on record indicating positively acquisition of some portion of the land of survey no.34 for widening of the said road. On the other hand, possibility of the land given to the Municipal Corporation, Pune by the Military for the purpose of widening the road cannot be ruled out. Though, the applicant/original plaintiff has introduced later on the encroachment during the pendency of the suit, however, considering the construction on the suit land survey no.19 towards southern side, the theory of encroachment over that portion hardly survives. The applicant/original plaintiff has conveniently ignored the initial theory of the acquisition of the land from the land survey no.34 for widening the road and put forth a new story of

encroachment over parking place of the suit land survey no.19 excluding the constructed area.

14. In view of the same, I do not think that the applicants/original plaintiff has established a prima facie case. The comparative inconvenience will be greater if the application seeking temporary injunction is allowed. I do not find any fault in the impugned order passed by the Waqf Tribunal, Aurangabad. Hence, I proceed to pass the following order.

ORDER

1. Civil Revision Application is hereby dismissed.
2. It is not necessary to mention that the observations made above are prima facie in nature and the Court below shall not get influenced by the observations made by this Court while disposing off the suit on merits.

(V.K. JADHAV)
JUDGE

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